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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,486	10/23/2002	Tin-Su Pan	124695	7326
23413 7590 10/29/2008 CANTOR COLBURN, LLP 20 Church Street 22nd Floor Hartford, CT 06103				
EXAMINER LAMPRECHT, JOEL				
ART UNIT		PAPER NUMBER		
3737				
NOTIFICATION DATE		DELIVERY MODE		
10/20/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

Office Action Summary

Application No.

10/065,486

Applicant(s)

PAN ET AL.

Examiner

JOEL M. LAMPRECHT

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/1/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-10, 14-17 and 21-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10, 14-17, 21-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings, filed 12/02 (Specifically 12/09/02) are objected to because they are not labeled as "Replacement Sheets". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. *Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).* If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 5-7, 9, 10, 14-16, 21, 22, 24, 26, 27, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg et al (US 2003/0128801 A1) in view of Barni (US 6,473,634 B1). Eisenberg et al discloses and teaches a method and system for static and dynamic image acquisition based on gated responses and a method for processing of acquired images including the acquisition of planar data having detector coverage in an axial direction defined by the motion of a gantry (0088), the acquisition of an image of a target area including the acquisition of data in a plurality of sub-target areas corresponding to individual detector elements (Figure 12, 3-8, 0060, 0069-0078 (Specifically 0077-0078), 0080, 0107-0109), and the combination of data into a synchronized image based on the acquisition data from specific times during physiological cycles including the breathing cycle (Claim 20, 0054-0059, 0065, 0088-0089, 0109, 0111, 0117-0120), computing an acquisition time through the use of

physiological monitoring (0088-0089, 0107-0121), collecting imaging data which is attenuated based on frequency and combined to produce a set of image data of the entire area of interest (0078, 0102, 0105-0106, 0118). The physiological gating process is controlled by a controller to allow for flexibility in the acquisition of image data corresponding to factors of the physiological cycle and gantry rotation/translation (0109, 0111, 0116-0118, 0054, 0058, 0065), and the phase of the physiological cycle is used to correlate the image data into synchronized data which entails an asynchronous scan mode with PET scan data (0116, 0113, 0108, 0107, 0057-0065).

The Examiner has interpreted Claim 21 as means plus function language, thus invoking the sixth paragraph of 35 U.S.C. 112, and the Examiner has looked to the specification for a description of the structure claimed. Although Eisenberg et al does not provide the exact structure described in the specification, it is a functional equivalent because it serves the same purpose of determining target areas and sub-target areas of interest, imaging the areas, combining and processing the image data and synchronizing the data, and it achieves the same result of registering images of a patient using retrospective gating.

Eisenberg et al disclose all that is listed above including frequency domain synchronization via frequency data collection, but do not specifically mention the "phase" of the data, rather the phase of the acquisition is taught, although it is not mentioned as "phase" but rather the correct timing during the physiological cycle. Retrospective gating is based on the data, rather than the acquisition and attention is then directed to Barni which explicitly teaches image data acquisitions at specific

phases or times during the physiological cycle using retrospective gating (Col 4 Line 25-Col 5 Line 25) where retrospective gating combines data from specific times in the physiological cycle. Additionally, although Eisenberg et al do not explicitly designate acquisition for 2/3rds of a gantry rotation or one gantry rotation plus a physiological cycle, it would have been obvious to one of ordinary skill in the art to have used the control systems of Eisenberg et al to perform such a method as a dynamic control system is disclosed and referenced above allowing for variable acquisitions of image data. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the phase gated techniques of Barni with the time gated techniques of Eisenberg et al due to the fact that phase and time are analogously related processes within a cyclical physiological cycle.

Claims 8, 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg et al (US 2003/0128801 A1) in view of Barni (US 6,473,634 B1) as applied to claims 1, 15, and 21 and in further view of Shao et al. (U.S. Patent Application Publication No. 2003/0233039). Eisenberg et al in view of Barni teaches all of the features of the present invention except for expressly disclosing that the PET emission data is synchronized with the phase. There is a gating process disclosed within Eisenberg based on the time dependent signal acquisition, but the "phase" of the data is not explicitly discussed (0053 and more as disclosed and referenced above). In the same field of endeavor, Shao et al. teaches matching PET data to the respiration phase of a subject being imaged (paras. 10, 48 and 68). It would have been obvious to

one of ordinary skill in the art at the time of the invention to synchronize the PET data with the phase of Eisenberg et al in view of Barni in order to improve the alignment of the images.

Claims 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg et al in view of Barni as applied to claim 24 above and in further view of Hu et al. (U.S. Patent No. 6,073,041).

Eisenberg et al in view of Barni teaches all of the features of the present invention, including determining a reference point in the data (col. 4, lines 66-67 and col. 5, lines 1-60, Barni), except for expressly disclosing that a phase of zero was assigned to the reference point and a phase of 2π was assigned to a subsequent reference point, where the synchronizing included selecting images' with corresponding phases and that the phase was adjusted when the reference point occurred when the imaging system was not active. In the same field of endeavor, Hu et al. teaches a system for retrospective gating of images using an assigned phase based on the respiratory cycle, where subsequent reference points were also assigned a phase, in order to register the images, where the phase was adjusted when the reference point occurred when the imaging system was not active (col. 6, lines 58-67, col. 7, lines 1-67, col. 8, lines 1-56, col. 11, lines 10-67 and col. 12, lines 1-14). Although the particular phase values of zero and 2π were not specifically taught, Hu et al. does teach periodic cycles, thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have used such values to characterize the periodicity of the phases assigned.

Claims 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg et al in view of Barni as applied to claims 1, 9, 15, and 24 above and in further view of McNutt et al (US 6,735,277 B2). Eisenberg et al in view of Barni discloses all that is listed above and also includes protocols for integration of a plurality of detector elements' data into one processed image portion for display but fails to mention the use of "step-and-shoot" techniques as applicable. Attention is then directed to the teaching reference by McNutt et al which discloses the use of step-and-shoot techniques as applied to multi-detector arrays for processing of diagnostic projection images (Col 5 Line 35-Col 7 Line 20, Col 8 Line 20-Col 10 Line 60). It would have been obvious to have incorporated the step-and-shoot protocols of McNutt et al in the detector systems and processing methods of Eisenberg et al in view of Barni for the purpose of reducing mis-registration and allow for more-accurate diagnosis and planning of surgical procedures (Col 5 Line 35-Col 6 Line 21).

Response to Arguments

Applicant's arguments filed 7/1/08 have been fully considered but they are not persuasive. Regarding the argument that Eisenberg et al does not disclose "subdividing the target area in the axial direction into multiples of an increment of the overall detector coverage" Examiner respectfully disagrees. The multi-modality system of Eisenberg et al uses a plurality of detector elements to reconstruct images which are fully capable and taught as being able to isolate areas or regions of interest from the individually detectors' data (Claims 12, 14, 31, and 0110-0112). Therein is disclosed individual protocols for each region where data is incorporated together (either by isolating

redundant data (from the many detectors) or incorporating averaging or other processes) to achieve a specific resolution in a region of interest (see sub-target area) which is comprised of pixels. Those familiar with image processing methods and very basic mathematical storage techniques recognize the "pixel" mapping method is an effective way to allow for the calling and storage of image data for histograms, post-processing (as disclosed within Eisenberg et al in the cited passages) and other targeted procedures (the step-and-shoot methods of the teaching reference to McNutt et al for the new claims).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOEL M. LAMPRECHT whose telephone number is (571)272-3250. The examiner can normally be reached on Monday-Friday 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571)272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML

/BRIAN CASLER/

Supervisory Patent Examiner, Art Unit 3737